

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 224 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1to 5: No

JADAV WAGHABHAI GAFALBHAI

Versus

BHAGWANBHAI S.S.- DECD.BY HEIRSHIVYBEN WD/O BHAGWANBHAI S.

Appearance:

MR DAXESH MEHTA for MR DD VYAS for Appellants
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 29/09/1999

ORAL JUDGEMENT

The appellants-plaintiffs had filed Civil Suit
No. 93/74 in the court of Civil Judge (J.D)). Limbdi.
The said suit was dismissed on 30.9.1977. Being
aggrieved by the judgment and decree, the
appellants-plaintiffs had filed Civil Appeal No. 75/77.

During pendency of the said appeal, the sole defendant-respondent, Sindhav Bhagwanbhai Sankalshibhai expired on 27.5.1978. The fact with regard to death of the said respondent-defendant, as per the case of the appellants-plaintiffs, was made known to appellant-plaintiff No. 3 on 11.4.79 when he received a letter written by an advocate who appeared for late Shri Sindhav Bhagwanbhai Sankalshibhai who was the sole respondent in the said appeal. In the circumstances, an application for setting aside abatement of the appeal and for bringing legal heirs on record was filed on 25.4.79 by the present appellants-plaintiffs. The said application was rejected by the learned Assistant Judge, Surendranagar by his order dated 17.11.79. Being aggrieved by the said order, the appellants-plaintiffs have filed the present appeal. Though served, nobody appears for the respondent.

I have heard learned advocate Shri Daxesh Mehta appearing for the appellants. He has submitted that the litigation was looked after by appellant No. 3. He was staying at a different place and therefore he was not aware about the death of the defendant till he was informed under the letter which was received by him on 11.4.79. It has been submitted by the learned advocate that looking to the provisions of Order 22 rule 10A of the C.P.C., it was the duty of the learned advocate of the deceased litigant to give necessary information to the court with regard to death of the said defendant. He has further submitted that according to the judgment delivered by the Hon'ble Supreme Court in case of Gangadhar and anr. v. Shri Raj Kumar, AIR 1983 SC 1202, it was duty of the lawyer to inform the fact with regard to the death of the litigant and as he had not informed the court and appellant No. 3 promptly, the trial court ought to have condoned the delay in filing of the application for setting aside the abatement and bringing the heirs of the deceased defendant on record. He has relied upon another judgment delivered in case of United Bank of India v. Kanan Bala Devi and others, AIR 1987 SC 1510 in support of his case wherein the Hon'ble Supreme Court has held that if intimation with regard to death of a customer is given to a branch which had not filed the suit, the concerned branch cannot be said to have knowledge with regard to death of the litigant and therefore knowledge of another branch with regard to death cannot be taken into consideration by the court.

Upon perusal of the impugned order, it is very clear that the suit was filed by the four present appellants. Appellants Nos. 1, 2 and 4 were residing in

the village in which the deceased defendant was residing. It appears that they were residing in the same lane and some of the appellants had also attended cremation and certain other obsequial ceremonies. The only argument which learned advocate Shri Mehta has advanced is that the said appellants are illiterate and they did not know that the fact with regard to the death of the defendant was to be informed to advocate so that needful can be done by the advocate. So far as appellant No. 3 is concerned, he was staying at a different place and he was informed about the death only by the lawyer appearing for the other side. He has therefore submitted that the impugned order is not just and proper because the period of limitation would commence from the date on which appellant No. 3 had got knowledge with regard to death of the defendant.

I do not find any illegality or irregularity in the impugned order for the reason that appellants Nos. 1, 2 and 4 very well knew about the fact of death of the defendant and as some of them had also attended the cremation ceremony, it cannot be said that they were not aware of the fact with regard to the sad demise of the defendant.

So far as judgment in case of Gangadhar (supra) is concerned, it declares that it is the duty of the lawyer appearing for the deceased litigant to inform the court. It was not duty of the learned advocate appearing for late Shri Sindhav Bhagwanbhai Sankalshibhai to inform the appellants. Even if the learned lawyer had not informed appellant no. 3, the appeal would have been abated unless legal heirs would have been brought on record within the period prescribed by law. In the circumstances, I do not think that the said judgment will be of any help to ld. advocate Shri Mehta.

So far as judgment delivered in United Bank of India (supra) is concerned, in my opinion, the said judgment will also not help the present appellants for the reason that in the case decided by the Hon'ble Supreme Court, intimation with regard to death of the customer was given to a different branch. The branch which had not filed the suit was informed about death of the customer by his widow. Naturally knowledge of another branch cannot be presumed to be the knowledge of the branch which had initiated litigation against the deceased customer. In the circumstances, in my opinion, the said judgment is also of little help to the appellants.

The submission with regard to ignorance of law also cannot be accepted. It is not in dispute that 3 appellants were residing in the same village and possibly in the same lane. It is also an admitted fact that some of them had attended the cremation ceremony and therefore it is not the case of the said appellants that they did not know anything with regard to death of late Shri Sindhav Bhagwanbhai Sankalshibhai.

Looking to the reasons assigned by the trial court, I do not think that the said reasons can be said to be improper or illegal. The order passed by the trial court appears to be just and proper and therefore the appeal is dismissed with no order as to costs.

(hn)